A fortiori, in the instant case where the forms of withdrawal were not received by the Registrar of Businesses and the plaintiffs were not notified.

In the circumstances there did not appear to be any merits in this appeal, and it was therefore dismissed with costs.

Suffian and **MacIntyre F.JJ.** concurred.

Appeal dismissed.

Solicitors: *Ranjit, Thomas & Kula; Heng, Chen & Co.*

HAJI TALIB v. PUBLIC PROSECUTOR

[F.C. (Ong Hock Thye, Suffian & MacIntyre F.JJ.) August 19, 1968]

[K.L. — Federal Court Criminal Appeal No. X13 of 1968]

Penal Code, ss. 302 & 304 — Murder — Defences of provocation and self-defence put to jury — Defence of sudden fight not put to jury — Whether omission fatal.

The appellant was convicted of murder and sentenced to death. The learned trial judge in his summing up to the jury had directed them that only two defences were open to the accused — namely provocation and self defence. The appellant's main ground of appeal was that the defence of sudden fight which is separate and distinct from the defence of grave and sudden provocation should have been distinctly put as such to the jury so that they could have considered all the evidence in relation thereto.

Held: there was a *lacuna* in the omission to put the specific defence of sudden fight to the jury even though it had not been raised by defence counsel and accordingly the appeal should be allowed and the conviction of murder set aside and a verdict of culpable homicide not amounting to murder substituted.

FEDERAL COURT.

D.R. Seenivasagam (*E.V. Devadason* with him) for the appellant.

K. Somasundram (Deputy Public Prosecutor) for the respondent.

Ong Hock Thye F.J.: The appellant was on July 2, 1968 convicted on a charge of murder, under section 302 of the Penal Code, and sentenced to death. The verdict of the jury was by a majority of 5 to 2.

The facts were unusually simple. At about 11 a.m. on September 11, 1967 the appellant encountered the deceased, a Chinese convert to Islam, on a lonely stretch of the Simpang Pertang Road at the 58th Milestone near Durian Tipus. There were no eye-witnesses of what took place. The only version of the incident was that supplied by the appellant's own confession to the magistrate. He had voluntarily surrendered himself at the nearest police station directly after the event.

The confession was brief and may be quoted in full:—

"On 25.8.1966 Wong Tiu hacked me with a parang here (pointing to a scar on the chin), a second hacking was on the right thumb, a third hacking was this (pointing to the right below the elbow), a fourth hacking was on the left side of body. Today 11.9.67 I rode a bicycle carrying rubber seedlings' shovel. On arrival near a bridge about a mile away from the Durian Tipus police station, I was going along on my left side. When Wong Tiu came face to face with me, he rushed at me on the bicycle and pushed me. The shovel which was carried on the shoulder with the blade facing towards the front straightaway struck the left side of the head. I retreated from that place. Wong Tiu rushed at me. I stopped (him) with the shovel's blade. It struck the left side of the head also. Again I retreated, he then rushed (at me). I stopped (him) with the shovel's blade and it also struck him again. He then fell on the road. I ran and took the bicycle and straightaway surrendered myself at the Durian Tipus police station and lodged a report."

This confession had been admitted without any objection by the defence. At the trial the appellant elected to say nothing. He could not, therefore, be cross-examined by the prosecution.

The learned trial judge in his summing-up to the jury had directed them that two defences only were open to the accused, namely, provocation and self-defence, as to each of which his directions were clear and wholly impeccable. Depending upon how one looks at the summing-up as a whole, however, it could with equal force, be said that a possible third ground of defence had or had not been adequately put to the jury. This is Exception 4 to section 300 of the Penal Code, which provides as follows:—

"Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without an offender having taken undue advantage or acted in a cruel or unusual manner."

On the one hand it could fairly be argued that the directions given regarding provocation comprehended all that need be said also with regard to Exception 4.

The appellant's main ground of appeal, however, is that Exception 4, being separate and distinct from the defence of grave and sudden provocation, which is Exception 2, should have been distinctly put as such to the jury, so that they could have considered all the evidence in relation thereto, even after they were minded to reject the defence of provocation.

We have given this submission by learned counsel for the appellant our most careful consideration. With the greatest respect for the learned trial judge, whose summings-up have always been models of precision and comprehensiveness for many years past, we feel that perhaps in this case there was in effect a *lacuna* in the omission to put the specific defence of sudden fight to the jury, even though it had not been raised by defending counsel. It was quite possible that, had the jury been directed on this defence, the very nature of the deceased's 4 serious head wounds, each of which was sufficient to cause death, might be held to have taken

the case out of the exception by reason of the appellant appearing to have taken undue advantage of the deceased and having acted in a cruel or unusual manner. Nevertheless, this was a question of fact which the jury had not been directed to weigh in their deliberations. The majority verdict of 5 to 2 clearly reveals that there was a certain measure of disagreement which fortifies us in saying we cannot be sure that, if specifically directed with regard to sudden fight, the jury might not have found the appellant guilty of the lesser offence.

For this reason we will allow this appeal with regard to conviction of murder and substitute therefor a verdict of culpable homicide not amounting to murder, punishable under section 304 of the Penal Code.

We have carefully considered what should be the appropriate sentence. The attack made on the deceased with the spade caused frightful injuries, but one of the four would have sufficed to cause mortal injury, rendering the other three superfluous. In all the circumstances, we sentence the appellant to 10 years' imprisonment, dating from the day of his arrest.

Appeal with regard to conviction for murder allowed. Verdict of culpable homicide not amounting to murder substituted.

Solicitors: *Ernest V. Devadason & Co.*

KOK SWEE TENG & ANOR. v. PEROLA NAVIGATION & TRADING CO. LTD.

[F.C. (Tan Ah Tah F.J., Chua & Winslow JJ.) August 28, 1968]

[Singapore—Federal Court Civil Appeal No. Y21 of 1968]

Practice and Procedure — Final judgment entered by registrar — High court varying decision of registrar by granting leave to defend — Whether justified — R.S.C. 1934, O. XIV.

The respondents sued the appellants for the sum of $74,212.50 on two dishonoured cheques. The deputy registrar gave the respondents leave to sign final judgment on the amount claimed. On appeal the High Court granted the appellants leave to defend on the condition that they furnish security in the sum of the amount claimed to the satisfaction of the registrar within 14 days. On appeal to the Federal Court,

Held: (1) the High Court had been left with a real doubt about the good faith of the appellants and desired to protect the respondents in circumstances which would work no hardship to the appellants within the principle enunciated in *Fieldrank Ltd.* v. *E. Stein* (1);

(2) in the case of the first cheque there were circumstances which created a real doubt about the *bona fides* of the defence and the order of the High Court should be confirmed. In the case of the second cheque there was a fair probability of a defence which entitled the defendants to unconditional leave to defend without having to furnish security to the value of the second cheque.

Cases referred to:—

(1) *Fieldrank Ltd.* v. *E. Stein* [1961] 1 W.L.R. 1287.

(2) *Leadbitter* v. *Farrow* 105 E.R. p. 1077.

FEDERAL COURT.

J.B. Jeyaretnam for the appellants.

Arul Chandran for the respondents.

Cur. Adv. Vult.

Winlsow J. (delivering the judgment of the court): This is an appeal against that part of the decision of the learned Chief Justice delivered in chambers on 7th June, 1968 requiring the defendants/appellants to furnish security in the sum of S$74,212.50, to the satisfaction of the registrar within 14 days. He granted the defendants conditional leave to defend, the condition being the furnishing of the security aforesaid.

The deputy registrar had previously on 6th May, 1968 given the plaintiffs/respondents leave to sign final judgment for the sum of S$74,212.50. This was the amount claimed by plaintiffs on two dishonoured cheques, one dated 10th August, 1967 for H.K.$100,000, and the other a cheque dated 5th January, 1967 for H.K.$40,000.

The defendants were the drawers of the first cheque dated 10th August, 1967 which was payable to the plaintiffs.

With regard to the second cheque dated 5th January, 1967, the defendants, as holders in due course, had indorsed it over in favour of the plaintiffs.

Although the deputy registrar gave leave to sign final judgment in full as claimed, presumably on the ground that no defence had been made out to his satisfaction on the materials before him, the learned Chief Justice, on an appeal from this order, by granting the defendants conditional leave to defend, appears to have taken the view, on the same materials, that although there was some kind of a triable issue it was not one which inclined him to grant unconditional leave to defend. It would also appear that he had been left with a real doubt about the good faith of the defendants and desired to protect the plaintiffs in circumstances which would work no hardship to the defendants within the principle enunciated in *Fieldrank Ltd.* v. *E. Stein.*(1)

We have carefully considered the arguments addressed to us by counsel for the defendants and for the plaintiffs on the merits of the defence as disclosed by the affidavits filed on both sides.

We are of the view that the case in respect of each cheque must be taken separately. While there was undoubtedly a close relationship between the parties, as owners and charterers of the m.v. "Perola" respectively, as a result of which certain monies became due to the plaintiffs